IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMON ORDER IN

APPEAL NO. 291 of 1997
FROM
NOTICE OF MOTION NO. 196 OF 1995
ALONG WITH
CHAMBER SUMMONS NO. 1189 OF 1995

ALONG WITH

APPEAL NO. 292 OF 1997
FROM
CHAMBER SUMMONS NO. 1189 OF 1995
IN
SUIT NO. 6 OF 1995

Pravinchandra Bhatt .. Appellant

versus

M/s.Universal Builders .. Respondents

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Mr.C.S. Kapadia a/w Mr.Simil Purohit i/b M/s.Kishore Thakordas & Co. for the appellant.

Mr.P.V. Palan i/b Mr.S.M. Kazi for the respondents.

CORAM : R.M. LODHA AND
D.G. KARNIK, JJ

DATED : 22nd November 2005.

ORAL JUDGEMENT (Per D.G. Karnik, J)

1. These two appeals are directed against the common order dated 13th January 1997 passed by the learned Single Judge in Notice of Motion no. 196 of 1995 with Chamber Summons No. 1189 of 1995.

2. In the suit filed by the appellant for recovery of money and in the alternative for rendition of accounts, the plaintiff took out a Chamber Summons for discovery, production and inspection of the documents set out in the list annexed thereto i.e. books of accounts, bank pass books, slip books, agreements, vouchers etc. pertaining to the transactions of sale of flats and shops in the building known as Silver Arch. The plaintiff also took out a Notice of Motion for appointment of a receiver and in the alternative a direction to the defendant to deposit the books of accounts, bank passbooks, slip books, agreements, vouchers etc. i.e. the very documents mentioned in the Chamber Summons. By the impugned order, the learned Single Judge dismissed the Chamber Summons as

also the Notice of Motion.

3. In the suit, the plaintiff claimed that he acted as an agent of the defendant in respect of a certain property transaction and the defendant had agreed to pay him commission/brokerage in respect of the purchase of the property as well as in respect of the sale of the flats and shops which the defendant would construct on the said property. He claimed that in breach of the said agreement, the defendant removed him as an agent and appointed somebody else as an agent and thereby attempted to deprive the plaintiff of his brokerage. He therefore, claimed a certain amount of money as an estimated amount of brokerage that he would have received. In the alternative, he prayed for rendition of accounts and ascertaining the amount of brokerage payable.

4. By the Chamber Summons, as stated earlier, the defendant sought inspection of the agreements of the sale of the flats/shops, letters of allotment issued in respect of the flats and shops as also of the books of accounts pertaining to the sale and transfer of the flats and the bank passbooks, slip books and vouchers in connection with the sale or

transfer of the flat and shops in the concerned building known as Silver Arch. The principal relief claimed in the suit is recovery of money equivalent to the estimated amount of brokerage. Since the plaintiff had pleaded the breach of an agreement by the defendant, on proof of all the issues in the suit he would be entitled to damages equivalent to the amount of loss suffered by him i.e. amount of brokerage that he would ordinarily have received if the contract was not broken. The plaintiff would be required to prove on his own the amount of damages suffered by him; he cannot compel the defendant to aid and assist him in proving to claim by production of the documents. If the relevant documents in custody of the defendant are withheld by it the Court would be entitled to draw an appropriate inference therefrom. We are of the opinion that the defendant cannot be required, by an order of Court to produce or even give an inspection of the documents asked for.

5. It can also be inferred that agreements of sale in respect of the flat/shops would be in possession of the purchasers and not in possession of the defendant. Similarly, letters of allotment of

the flats and shops, if any, would also be in the possession of the purchasers and not the defendant. Under the Ownership Flats Act 1963 agreements of sale of flats are required to be registered with the sub-registrar. The plaintiff can therefore, duly obtain the certified copies of the agreements of sale and produce them in the Court. He can also summon the purchasers and get the agreements of sale produced. There is no question of defendant producing the original agreement of sale and letters of allotment which are not expected to be in possession of the defendant.

6. As regards the prayer for inspection and production of the books of accounts, passbooks, slip books and vouchers etc, we notice that the plaintiff in the plaint has prayed not only the rendition of account but also foe an order or direction to the defendant to produce and give inspection to the original books of account, bank passbook, sale agreements, vouchers and other documents. Granting of the relief of inspection and production at this stage and before the trial would amount to granting of a final relief at the stage before the trial itself. In any event, in suit like this if the

alternative prayer is to be granted, the relief would be of a preliminary decree in the nature of rendition of accounts. The bank pass books, vouchers and other relevant documents would then be required to be produced before the Commissioner for taking accounts in the final decree proceedings. The learned Single Judge was therefore, right in refusing the relief of a production and/or direction for inspection of the documents.

7. Nothing was argued before us regarding the rejection of prayer for appointment of a receiver. It is therefore, not necessary for us to deal with the issue of the appointment of a receiver.

8. In the circumstances, we find no merit in the appeal which is hereby dismissed.

9. No costs.

(R.M. LODHA, J)

(D.G. KARNIK, J)